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HOUSE BILL 2367

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State of Washington

57th Legislature

2002 Regular Session

By Representatives Lantz, Ballasiotes, Cody, McDermott, Veloria, Lysen, Darneille, Dickerson, Linville, Lovick, Edwards, Kagi and Kenney

Read first time 01/16/2002. Referred to Committee on Judiciary.

1 AN ACT Relating to advance directives for mental health treatment;  
2 amending RCW 11.94.010, 11.88.010, and 11.88.030; adding a new chapter  
3 to Title 71 RCW; and creating a new section.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** The legislature declares that a person has  
6 the ability to control decisions relating to his or her own mental  
7 health care even when the person's ability to declare his or her  
8 choices is impaired due to mental illness. The legislature recognizes  
9 that an advance directive can be an essential tool for a person to  
10 express his or her choices before the effects of mental illness deprive  
11 the person of the power to express his or her instructions and  
12 preferences for mental health treatment. The legislature affirms that,  
13 pursuant to other provisions of law, a mental health advance directive  
14 created under this act should be respected by medical and mental health  
15 professionals, guardians, attorneys-in-fact, and other surrogate  
16 decision makers acting on behalf of the person who created it.

17 NEW SECTION. **Sec. 2.** The definitions in this section apply  
18 throughout this chapter unless the context clearly requires otherwise.

1 (1) "Adult" means any person who has attained the age of majority  
2 as defined in RCW 26.28.010 or an emancipated minor.

3 (2) "Incapacitated person" means a person who is not a person with  
4 capacity.

5 (3) "Mental disorder" has the meaning given in RCW 71.05.020.

6 (4) "Mental health advance directive" or "directive" means a  
7 written document in which the person makes a declaration of  
8 instructions or preferences or appoints an agent to make decisions on  
9 behalf of the person regarding the person's mental health treatment and  
10 that is consistent with the provisions of this act.

11 (5) "Mental health professional" has the meaning given in RCW  
12 71.05.020.

13 (6) "Person with capacity" means an adult who has the ability to  
14 understand the significance of a directive or its revocation and who  
15 acts free from fraud and undue influence.

16 (7) "Professional person" has the meaning given in RCW 71.05.020.

17 (8) "Psychiatrist" has the meaning given in RCW 71.05.020.

18 NEW SECTION. **Sec. 3.** (1) For the purposes of this act, an adult  
19 is presumed to be a person with capacity. A person who has been  
20 declared an incapacitated person may subsequently reassert his or her  
21 capacity and it shall be presumed that the person has regained capacity  
22 until he or she is declared otherwise.

23 (2) For the purposes of this act, no adult may be declared an  
24 incapacitated person except by: (a) Court order; or (b) the opinion of  
25 two mental health professionals, at least one of whom is a  
26 psychiatrist.

27 NEW SECTION. **Sec. 4.** (1) A person with capacity may create a  
28 directive.

29 (2) A directive may include any provision relating to mental health  
30 treatment or the care of the person or the person's personal affairs.  
31 Without limitation, a directive may include:

32 (a) The person's preferences and instructions for mental health  
33 treatment;

34 (b) Consent to specific types of mental health treatment;

35 (c) Refusal to consent to specific types of mental health  
36 treatment;

1 (d) Consent to admission to and retention in a facility for mental  
2 health treatment;

3 (e) Descriptions of situations that may cause the person to  
4 experience a mental health crisis;

5 (f) Suggested alternative responses that may supplement or be in  
6 lieu of direct mental health treatment, such as treatment approaches  
7 from other providers;

8 (g) Appointment of an agent to make mental health treatment  
9 decisions on the person's behalf, including authorizing the agent to  
10 provide consent on the person's behalf to voluntary admission to  
11 inpatient mental health treatment consistent with section 7 of this  
12 act;

13 (h) Consent to have the person's health care information released  
14 to other providers or third parties; and

15 (i) The person's nomination of a guardian or limited guardian for  
16 consideration by the court if guardianship proceedings are commenced.

17 (3)(a) A directive may be combined with or be independent of the  
18 power of attorney authorized in chapter 11.94 RCW or guardianship  
19 authorized in chapter 11.92 RCW, so long as the processes for each are  
20 executed in accordance with its own statutes. If a directive  
21 authorizes the appointment of an agent, the provisions of chapter 11.94  
22 RCW shall apply unless otherwise stated in this chapter.

23 (b) Unless provided otherwise in either document, the directive or  
24 power of attorney most recently created shall be construed to be the  
25 person's most recent mental health treatment preferences and  
26 instructions.

27 NEW SECTION. **Sec. 5.** (1) A directive shall:

28 (a) Be in writing;

29 (b) Contain language that clearly indicates that the person intends  
30 to create a directive;

31 (c) Be dated and signed by the person; and

32 (d) Be witnessed in writing by at least two adults, each of whom  
33 shall certify that he or she personally knows the person, was present  
34 when the person dated and signed the directive, and that the person  
35 appeared to be a person with capacity.

36 (2) A witness may not be any of the following:

37 (a) A person designated to make health care decisions on the  
38 person's behalf;

1 (b) A professional person directly involved with caring for the  
2 person at the time the directive is executed;

3 (c) An owner, operator, or relative of an owner or operator of a  
4 health care facility or long-term care facility in which the person is  
5 a patient or resident;

6 (d) A person who is related by blood, marriage, or adoption to the  
7 person; or

8 (e) A person who is declared to be an incapacitated person.

9 (3) A directive executed in accordance with this section is  
10 presumed to be valid.

11 (4) A directive may:

12 (a) Become operative immediately or at a later time as designated  
13 in the directive;

14 (b) Be revoked, in whole or in part, by the person who created it;

15 (c) Be revoked, in whole or in part expressly or to the extent of  
16 any inconsistency, by a subsequent directive;

17 (d) Expire under its own terms;

18 (e) Be superseded or revoked by a court order. To the extent a  
19 directive is not in conflict with a court order, the directive remains  
20 effective.

21 (5) A directive that would have otherwise expired but is operative  
22 because the person is an incapacitated person remains operative until  
23 the person is no longer an incapacitated person.

24 NEW SECTION. **Sec. 6.** (1)(a) Upon receiving a directive, a  
25 professional person treating the person shall make the directive a part  
26 of the person's medical record and shall be deemed to have actual  
27 knowledge of its contents. Whenever possible, the professional person  
28 shall inform a person or the person's agent if he or she may be  
29 precluded from honoring all or part of the directive based on the  
30 reasons in subsection (3) of this section.

31 (b) If no physician-patient relationship has previously been  
32 established, nothing in this statute requires the establishment of a  
33 physician-patient relationship.

34 (2) In the absence of actual notice to the contrary, a professional  
35 person shall presume that a person who created a directive was a person  
36 with capacity at the time the directive was created and that the  
37 directive is valid.

1 (3) Subject to subsections (6) and (7) of this section, a  
2 professional person who has been presented with or has obtained a  
3 person's directive and who is treating the person shall act in  
4 accordance with the provisions of the directive to the fullest extent  
5 possible, consistent with reasonable medical practice, the availability  
6 of treatments, and applicable law. If the professional person is at  
7 any time unable to comply, the professional person shall offer to  
8 withdraw from treating the person.

9 (4) If the directive authorizes the appointment of an agent, the  
10 agent has the same right as the person to receive and review the  
11 person's medical records. If the person consents in the directive to  
12 having his or her health care information released to other providers  
13 or third parties, the professional person's disclosure of health care  
14 information shall not be a violation of chapter 70.62 RCW.

15 (5) To the extent the person has not waived the right to informed  
16 consent and except as provided in chapter 71.05 RCW, the professional  
17 person shall continue to obtain the person's informed consent regarding  
18 all mental health treatment decisions.

19 (6) A professional person who is treating a person involuntarily  
20 detained under chapter 71.05 or 71.34 RCW shall act in accordance with  
21 the provisions of the person's directive to the fullest extent possible  
22 and as permitted by the applicable involuntary detention laws,  
23 consistent with reasonable medical practice and the availability of  
24 treatment.

25 (7) The professional person may provide treatment that is  
26 inconsistent with specific preferences or instructions in the directive  
27 if the directive authorizes the professional person to use his or her  
28 best medical judgment in cases of emergencies.

29 (8)(a) A private or public agency, government entity, or  
30 professional person, or personnel acting under the direction of a  
31 professional person, or any health care facility or long-term care  
32 facility is not subject to civil liability for failure to act in  
33 accordance with a directive if that person does not have actual  
34 knowledge of the directive.

35 (b) A private or public agency, government entity, or professional  
36 person, or personnel acting under the direction of a professional  
37 person, or any health care facility or long-term care facility is not  
38 subject to civil liability for providing, in good faith, mental health  
39 treatment to a person in accordance with the person's directive.

1        NEW SECTION.    **Sec. 7.**    (1) If a person consents in the directive,  
2 or authorizes an agent to consent on the person's behalf, to voluntary  
3 admission to inpatient mental health treatment, the admission may not  
4 exceed seventy-two hours, including weekends. If, after the seventy-  
5 two hour period, the person does not consent to remain for additional  
6 treatment, the patient must be released during reasonable daylight  
7 hours following the expiration of the seventy-two hours.

8        (2) If a person consents in the directive, or authorizes the agent  
9 to consent on the person's behalf, to voluntary admission to inpatient  
10 mental health treatment and the person subsequently refuses to be  
11 admitted, the refusal shall be considered a revocation of that  
12 provision of the person's directive. An agent or professional person  
13 may seek a determination of the person's capacity to revoke as provided  
14 under section 8 of this act. If it is determined that the person has  
15 the capacity to revoke, then the person's refusal of voluntary  
16 admission shall be a revocation of that provision of the directive. If  
17 it is determined that the person does not have the capacity to revoke,  
18 then the directive remains valid, and the agent's consent on the  
19 person's behalf to voluntary admission to inpatient mental health  
20 treatment shall be considered a voluntary admission.

21        NEW SECTION.    **Sec. 8.**    (1) A person with capacity may revoke a  
22 directive in whole or in part by written statement at any time. The  
23 written statement of revocation is effective when signed by the person  
24 and it is delivered to the agent, if one is appointed, and the  
25 professional person who is responsible for the delivery of mental  
26 health treatment to the person. The professional person shall make the  
27 revocation part of the person's medical record.

28        (2)(a) If an agent or professional person believes that the person  
29 seeking to revoke all or part of the directive does not have capacity  
30 to revoke, the agent or professional person may seek a determination of  
31 the person's capacity within forty-eight hours of the attempted  
32 revocation.

33        (b) If a court or two mental health professionals, one of whom is  
34 a psychiatrist, find that it is more likely than not that the person  
35 did not have the capacity to revoke, then the attempted revocation is  
36 invalid. If the court or two mental health professionals, one of whom  
37 is a psychiatrist, find that it is more likely than not that the person  
38 had the capacity to revoke the directive, the revocation is valid. If

1 a determination of the person's capacity to revoke has not been made  
2 within forty-eight hours of the time the agent or professional person  
3 seeks a determination, then it is presumed that the person had the  
4 capacity to revoke the directive.

5 (3) A person declared under this chapter to be an incapacitated  
6 person by a court or two mental health professionals, one of whom is a  
7 psychiatrist, may not revoke a directive. If an incapacitated person  
8 seeks to revoke all or part of the directive, the agent or professional  
9 person may seek a determination of the person's capacity to revoke  
10 within forty-eight hours of the attempted revocation. If a  
11 determination of the person's capacity to revoke has not been made  
12 within forty-eight hours of the time the agent or professional person  
13 seeks a determination, then it is presumed that the incapacitated  
14 person had the capacity to revoke the directive.

15 (4) A private or public agency, government entity, or professional  
16 person, or personnel acting under the direction of a professional  
17 person, or any health care facility or long-term care facility  
18 participating in good faith in the mental health treatment of a person  
19 is not civilly liable for failing to follow or act upon a revocation if  
20 there was no actual knowledge of the revocation.

21 NEW SECTION. **Sec. 9.** Any person with good reason to believe that  
22 a directive has been created or revoked under circumstances amounting  
23 to falsification, forgery, or coercion may petition the court for  
24 appointment of a guardian for the person.

25 NEW SECTION. **Sec. 10.** The fact that a person has executed a  
26 directive does not constitute an indication of mental disorder or that  
27 the person is not capable of providing informed consent.

28 NEW SECTION. **Sec. 11.** A person shall not be required to execute  
29 or to refrain from executing a directive as a criterion for insurance,  
30 as a condition for receiving mental or physical health services, or as  
31 a condition of admission or discharge from a health care facility or  
32 long-term care facility.

33 NEW SECTION. **Sec. 12.** A directive does not limit any authority  
34 otherwise provided in Title 71 or 10 RCW, or any other applicable state

1 or federal laws to take a person into custody or to admit, retain, or  
2 treat a person in a health care facility.

3 NEW SECTION. **Sec. 13.** The directive may, but is not required to,  
4 be in the following form:

5 **"PART I. STATEMENT OF INTENT TO CREATE A MENTAL HEALTH ADVANCE**  
6 **DIRECTIVE**

7 I, . . . . ., being a person with capacity, willfully and voluntarily  
8 execute this mental health advance directive so that my choices  
9 regarding my mental health care will be carried out in circumstances  
10 when I am unable to express my intent regarding my mental health care.  
11 If a guardian or other decision maker is appointed by a court to make  
12 mental health decisions for me, I intend this document to take  
13 precedence over all other means of ascertaining my intent.

14 The fact that I may have left blanks in this mental health advance  
15 directive should not affect its validity in any way. I intend that all  
16 completed sections be followed. If I have not expressed a choice, my  
17 agent should make the decision that he or she determines is the  
18 decision I would make if I were capable to do so.

19 I intend this mental health care advance directive to take precedence  
20 over any and all durable power of attorney for health care documents  
21 and/or other advance directives I have previously executed, to the  
22 extent that they are inconsistent with this document, or unless I  
23 expressly state otherwise in this directive.

24 I understand that I may revoke this mental health advance directive in  
25 whole or in part by written statement only if I am a person with  
26 capacity. I understand that I cannot revoke this directive if a court  
27 or two mental health professionals, at least one being a psychiatrist,  
28 find that I am an incapacitated person.

29 **PART II. STATEMENT OF INTENT REGARDING WHEN THIS DIRECTIVE BECOMES**  
30 **OPERATIVE**

31 I intend that this directive become operative (check only one):

32 . . . Immediately upon my signing of this directive

33 . . . When the following circumstances, symptoms, or behaviors occur:

1 . . . . .

2 . . . If I become incapacitated.

3 **PART III. STATEMENT OF INTENT REGARDING PREFERENCES OR INSTRUCTIONS**  
4 **ABOUT TREATMENT, FACILITIES, AND PHYSICIANS**

5 A. Preferences or Instructions About Physician(s) to Be Involved in My  
6 Treatment

7 I would like the physician named below to be involved in my treatment  
8 decisions: Dr. . . . . . Telephone . . . . .

9 I do not wish to be treated by: . . . . .

10 B. Preferences or Instructions About Other Providers

11 I am receiving other treatment or care from providers who I feel have  
12 an impact on my mental health care. I would like the following  
13 additional service provider(s) to be contacted when this directive is  
14 operative:

15 Name . . . . . Profession . . . . . Telephone . . . . .

16 C. Preferences or Instructions About Medications for Psychiatric  
17 Treatment

18 . . . I consent, and authorize my agent (if named) to consent, to the  
19 following medications: . . . . .  
20 . . . . .

21 . . . I specifically do not consent and I do not authorize my agent (if  
22 named) to consent to the administration of the following medications:  
23 . . . . .  
24 . . . . .

25 Consideration of Medications Not Listed Above (check one below)

26 . . . I am willing to take the medications excluded above if my only  
27 reason for excluding them is the side effects which include . . . . .  
28 and these side effects can be eliminated by dosage adjustment or other  
29 means.

30 . . . I am willing to try any new medication the hospital doctor  
31 recommends.

1 . . . I am willing to try any new medications my outpatient doctor  
2 recommends.

3 . . . I do not want to try any new medications.

4 Medication Allergies

5 I have allergies to or severe side effects from the following  
6 medications: . . . . .  
7 . . . . .

8 Other Medication Preferences or Instructions

9 I have the following other preferences or instructions about  
10 psychiatric medications: . . . . .  
11 . . . . .  
12 . . . . .

13 D. Preferences or Instructions About Hospitalization and Alternatives

14 . . . (check if desired) In the event my psychiatric condition is  
15 serious enough to require 24-hour care and I have no physical  
16 conditions that require immediate access to emergency medical care, I  
17 would prefer to receive this care in programs/facilities designed as  
18 alternatives to psychiatric hospitalizations.

19 I would also like the interventions below to be tried, before  
20 hospitalization is considered (check all that apply):

- 21 . . . Calling someone or having someone call you when needed
- 22 . . . Staying overnight with someone Name: . . . Telephone: . . .
- 23 . . . Having a mental health service provider come to see you
- 24 . . . Going to a crisis triage center or emergency room
- 25 . . . Staying overnight at a crisis respite (temporary) bed
- 26 . . . Seeing a service provider for help with psychiatric medications
- 27 . . . Other, specify . . . . .

28 Authority to Consent to Inpatient Treatment

29 I consent, and authorize my agent (if named) to consent, to voluntary  
30 admission to inpatient mental health treatment for a period not to  
31 exceed 72 hours (check one if desired):

32 . . . If deemed appropriate by my agent (if named) and treating  
33 physician

1 . . . Under the following circumstances (specify symptoms, behaviors,  
2 or circumstances that indicate the need for hospitalization)

3 . . . . .

4 Hospital Preferences or Instructions

5 If hospitalization is required, I prefer the following hospitals:

6 . . . . .

7 I do not wish to be admitted to the following hospitals:

8 . . . . .

9 E. Preferences or Instructions About Pre-Emergency Interventions

10 I would like the interventions below to be tried before use of  
11 seclusion or restraint is considered (check all that apply):

12 . . . "Talk me down" one-on-one

13 . . . More medication

14 . . . Time out/privacy

15 . . . Show of authority/force

16 . . . Shift my attention to something else

17 . . . Set firm limits

18 . . . Help me to discuss/vent feelings

19 . . . Decrease stimulation

20 . . . Offer to have neutral person settle dispute

21 . . . Other, specify . . . . .

22 F. Preferences or Instructions About Seclusion, Restraint, and  
23 Emergency Medications

24 If it is determined that I am engaging in behavior that requires  
25 seclusion, physical restraint, and/or emergency use of medication, I  
26 prefer these interventions in the following order (rank "1" for first  
27 choice, "2" for second choice, and so on):

28 . . . Seclusion

29 . . . Physical restraints

30 . . . Seclusion and physical restraint (combined)

31 . . . Medication by injection

32 . . . Medication in pill or liquid form

33 In the event that my attending physician decides to use medication in  
34 response to an emergency situation after due consideration of my

1 preferences or instructions for emergency treatments stated above, I  
2 expect the choice of medication to reflect any preferences or  
3 instructions I have expressed in Part III C of this form. The  
4 preferences or instructions I express in this section regarding  
5 medication in emergency situations do not constitute consent to use of  
6 the medication for nonemergency treatment.

7 G. Preferences or Instructions About Electroconvulsive Therapy (ECT or  
8 Shock Therapy)

9 My wishes regarding electroconvulsive therapy are (check one):

10 . . . I do not consent, nor authorize my agent (if named) to consent,  
11 to the administration of electroconvulsive therapy

12 . . . I consent, and authorize my agent (if named) to consent, to the  
13 administration of electroconvulsive therapy

14 . . . I consent, and authorize my agent (if named) to consent, to the  
15 administration of electroconvulsive therapy, but only under the  
16 following conditions: . . . . .

17 H. Additional Instructions About My Mental Health Care

18 Other instructions about my mental health care: . . . . .  
19 . . . . .

20 **PART IV. STATEMENT OF INTENT TO APPOINT AN AGENT**

21 I, . . . . ., authorize an agent to make mental health treatment  
22 decisions on my behalf. The authority granted to my agent includes the  
23 right to consent, refuse consent, or withdraw consent to any mental  
24 health care, treatment, service, or procedure, consistent with any  
25 instructions and/or limitations I have set forth in this advance  
26 directive. I intend that those decisions should be made in accordance  
27 with my expressed wishes as set forth in this document. If I have not  
28 expressed a choice in this document, I authorize my agent to make the  
29 decision that my agent determines is the decision I would make if I  
30 were capable to do so.

31 A. Designation of an Agent

32 I hereby appoint the following person as my agent to make mental health  
33 care decisions for me as authorized in this document and desire for

1 this person to be notified immediately when this directive becomes  
2 operative:

3 Name: . . . . . Relationship: . . . . .  
4 Address: . . . . .  
5 Day Telephone: . . . . . Evening Telephone: . . . . .

6 Agent's Acceptance

7 I hereby accept the designation as the agent for purposes described in  
8 this document (agent's signature) . . . . .

9 B. Designation of Alternate Agent

10 If the person named above is unavailable or unable to serve as my  
11 agent, I hereby appoint the following person as my alternate agent and  
12 desire for this person to be notified immediately when this directive  
13 becomes operative:

14 Name: . . . . . Relationship: . . . . .  
15 Address: . . . . .  
16 Day Telephone: . . . . . Evening Telephone: . . . . .

17 Alternate Agent's Acceptance

18 I hereby accept the designation as the alternate agent for purposes  
19 described in this document (alternate's signature) . . . . .

20 C. When My Spouse is My Agent (check if desired)

21 . . . If my spouse is my agent, I desire that person to remain as my  
22 agent even if we become legally separated or our marriage is dissolved.

23 D. Limitations on My Agent's Authority

24 I do not grant my agent the authority to consent on my behalf to the  
25 following: . . . . .

26 E. Preference as to Court-Appointed Guardian

27 In the event a court decides to appoint a guardian who will make  
28 decisions regarding my mental health treatment, I desire the following  
29 person to be appointed:

30 Name: . . . . . Relationship: . . . . .  
31 Address: . . . . .  
32 Day Telephone: . . . . . Evening Telephone: . . . . .

1 The appointment of a guardian of my estate or my person or any other  
2 decision maker shall not give the guardian or decision maker the power  
3 to revoke, suspend, or terminate this directive or the powers of my  
4 agent, except as specifically required by law.

5 **PART V. PREFERENCES OR INSTRUCTIONS ABOUT NOTIFICATION OF OTHERS, CARE**  
6 **OF PERSONAL AFFAIRS, AND CONSENTS TO RELEASE TREATMENT INFORMATION**

7 A. Who Should Be Notified

8 I desire staff to notify the following individuals, in addition to my  
9 agent (if named) immediately when this directive becomes operative:

10 Name: . . . . . Relationship: . . . . .  
11 Address: . . . . .  
12 Day Telephone: . . . . . Evening Telephone: . . . . .

13 B. Who Should Not be Permitted to Visit

14 If I have been admitted to a mental health treatment facility, I do not  
15 wish the following people to be permitted to visit me there:

16 Name: . . . . . Relationship: . . . . .

17 C. Consents to Obtain Previous Treatment Records

18 I consent to release treatment records from the following previous  
19 treatment providers upon request by treatment providers acting under  
20 this mental health advance directive:

21 Provider(s): . . . . .

22 D. Consents to Release Treatment Information

23 I consent to release relevant treatment information to the following  
24 individuals in addition to my agent and current treatment providers:

25 Name: . . . . . Relationship: . . . . .  
26 Address: . . . . .  
27 Day Telephone: . . . . . Evening Telephone: . . . . .

28 E. Preferences or Instructions About Personal Affairs

29 I have the following preferences or instructions about my personal  
30 affairs (e.g., care of dependents, pets, household) if I am admitted to  
31 a mental health treatment facility: . . . . .

1 **PART VI. DURATION OF MY MENTAL HEALTH ADVANCE DIRECTIVE**

2 . . . I want this mental health advance directive to remain valid and  
3 in effect for an indefinite period of time.

4 . . . I want this mental health advance directive to automatically  
5 expire within . . . years from the date it was created.

6 **PART VII. SIGNATURE**

7 By signing here, I indicate that I understand the purpose and effect of  
8 this document.

9 . . . . .  
10 Signature Date

11 The directive above was signed and declared by the "Declarant,"  
12 . . . . . to be his or her mental health advance directive, in our  
13 presence who, at his or her request, have signed names below as  
14 witness. We declare that, at the time of the creation of this  
15 instrument, the Declarant is personally known to us, and, according to  
16 our best knowledge and belief, was a person with capacity at the time.  
17 We further declare that none of us is: (1) A person designated to make  
18 medical decisions on the person's behalf; (2) a mental health  
19 professional or other professional person directly involved with the  
20 provision of care to the person at the time the mental health advance  
21 directive is executed; (3) an owner, operator, or relative of an owner  
22 or operator of a health care facility or long-term care facility in  
23 which the person is a patient or resident; (4) a person who is related  
24 by blood, marriage, or adoption to the person; or (5) an incapacitated  
25 person.

26 Dated at . . . . . (county, state),  
27 this . . . . . day of . . . . . of . . . . .

28 Witness 1 Witness 2  
29 . . . . . . . . . . .  
30 Signature Signature  
31 . . . . . . . . . . .  
32 Printed Name Printed Name  
33 . . . . . . . . . . .



1 principal's person or estate are thereafter commenced. The court shall  
2 make its appointment in accordance with the principal's most recent  
3 nomination in a durable power of attorney except for good cause or  
4 disqualification. If a guardian thereafter is appointed for the  
5 principal, the attorney in fact or agent, during the continuance of the  
6 appointment, shall account to the guardian rather than the principal.  
7 The guardian has the same power the principal would have had if the  
8 principal were not disabled or incompetent, to revoke, suspend or  
9 terminate all or any part of the power of attorney or agency.

10 (2) Persons shall place reasonable reliance on any determination of  
11 disability or incompetence as provided in the instrument that specifies  
12 the time and the circumstances under which the power of attorney  
13 document becomes effective.

14 (3)(a) A principal may authorize his or her attorney-in-fact to  
15 provide informed consent for health care decisions on the principal's  
16 behalf. If a principal has created both a power of attorney and a  
17 directive, pursuant to chapter 71.-- RCW (sections 1 through 13 of this  
18 act), authorizing an agent to make mental health care decisions on the  
19 person's behalf, the directive or power of attorney most recently  
20 created shall be construed to contain the person's most recent mental  
21 health treatment preferences and instructions, unless provided  
22 otherwise in either document. An attorney-in-fact appointed under a  
23 mental health advance directive has the same right as the principal to  
24 receive and review the principal's medical records relating to mental  
25 health treatment. If the principal so states in the mental health  
26 advance directive, an attorney-in-fact may provide consent on behalf of  
27 the principal to voluntary admission to inpatient mental health  
28 treatment for a period not to exceed seventy-two hours.

29 (b) Unless he or she is the spouse, or adult child or brother or  
30 sister of the principal, none of the following persons may act as the  
31 attorney-in-fact for the principal or as an agent in a mental health  
32 advance directive: Any of the principal's physicians, the physicians'  
33 employees, or the owners, administrators, or employees of the health  
34 care facility or long-term care facility where the principal resides or  
35 receives care. Except as provided in subsection (a) of this section,  
36 this authorization is subject to the same limitations as those that  
37 apply to a guardian under RCW 11.92.043(5) (a) through (c).

1       **Sec. 15.** RCW 11.88.010 and 1991 c 289 s 1 are each amended to read  
2 as follows:

3       (1) The superior court of each county shall have power to appoint  
4 guardians for the persons and/or estates of incapacitated persons, and  
5 guardians for the estates of nonresidents of the state who have  
6 property in the county needing care and attention.

7       (a) For purposes of this chapter, a person may be deemed  
8 incapacitated as to person when the superior court determines the  
9 individual has a significant risk of personal harm based upon a  
10 demonstrated inability to adequately provide for nutrition, health,  
11 housing, or physical safety.

12       (b) For purposes of this chapter, a person may be deemed  
13 incapacitated as to the person's estate when the superior court  
14 determines the individual is at significant risk of financial harm  
15 based upon a demonstrated inability to adequately manage property or  
16 financial affairs.

17       (c) A determination of incapacity is a legal not a medical  
18 decision, based upon a demonstration of management insufficiencies over  
19 time in the area of person or estate. Age, eccentricity, poverty, or  
20 medical diagnosis alone shall not be sufficient to justify a finding of  
21 incapacity.

22       (d) A person may also be determined incapacitated if he or she is  
23 under the age of majority as defined in RCW 26.28.010.

24       (e) For purposes of giving informed consent for health care  
25 pursuant to RCW 7.70.050 and 7.70.065, an "incompetent" person is any  
26 person who is (i) incompetent by reason of mental illness,  
27 developmental disability, senility, habitual drunkenness, excessive use  
28 of drugs, or other mental incapacity, of either managing his or her  
29 property or caring for himself or herself, or both, or (ii)  
30 incapacitated as defined in (a), (b), or (d) of this subsection.

31       (f) For purposes of the terms "incompetent," "disabled," or "not  
32 legally competent," as those terms are used in the Revised Code of  
33 Washington to apply to persons incapacitated under this chapter, those  
34 terms shall be interpreted to mean "incapacitated" persons for purposes  
35 of this chapter.

36       (2) The superior court for each county shall have power to appoint  
37 limited guardians for the persons and estates, or either thereof, of  
38 incapacitated persons, who by reason of their incapacity have need for  
39 protection and assistance, but who are capable of managing some of

1 their personal and financial affairs. After considering all evidence  
2 presented as a result of such investigation, the court shall impose, by  
3 order, only such specific limitations and restrictions on an  
4 incapacitated person to be placed under a limited guardianship as the  
5 court finds necessary for such person's protection and assistance. A  
6 person shall not be presumed to be incapacitated nor shall a person  
7 lose any legal rights or suffer any legal disabilities as the result of  
8 being placed under a limited guardianship, except as to those rights  
9 and disabilities specifically set forth in the court order establishing  
10 such a limited guardianship. In addition, the court order shall state  
11 the period of time for which it shall be applicable.

12 (3) Venue for petitions for guardianship or limited guardianship  
13 shall lie in the county wherein the alleged incapacitated person is  
14 domiciled, or if such person resides in a facility supported in whole  
15 or in part by local, state, or federal funding sources, in either the  
16 county where the facility is located, the county of domicile prior to  
17 residence in the supported facility, or the county where a parent or  
18 spouse of the alleged incapacitated person is domiciled.

19 If the alleged incapacitated person's residency has changed within  
20 one year of the filing of the petition, any interested person may move  
21 for a change of venue for any proceedings seeking the appointment of a  
22 guardian or a limited guardian under this chapter to the county of the  
23 alleged incapacitated person's last place of residence of one year or  
24 more. The motion shall be granted when it appears to the court that  
25 such venue would be in the best interests of the alleged incapacitated  
26 person and would promote more complete consideration of all relevant  
27 matters.

28 (4) Under RCW 11.94.010 or chapter 71.-- (sections 1 through 13 of  
29 this act), a principal may nominate, by a durable power of attorney or  
30 the mental health advance directive, the guardian or limited guardian  
31 of his or her estate or person for consideration by the court if  
32 guardianship proceedings for the principal's person or estate are  
33 thereafter commenced. The court shall make its appointment in  
34 accordance with the principal's most recent nomination in a durable  
35 power of attorney or mental health advance directive except for good  
36 cause or disqualification.

37 (5) When a court imposes a full guardianship for an incapacitated  
38 person, the person shall be considered incompetent for purposes of  
39 rationally exercising the right to vote and shall lose the right to

1 vote, unless the court specifically finds that the person is rationally  
2 capable of exercising the franchise. Imposition of a limited  
3 guardianship for an incapacitated person shall not result in the loss  
4 of the right to vote unless the court determines that the person is  
5 incompetent for purposes of rationally exercising the franchise.

6 **Sec. 16.** RCW 11.88.030 and 1996 c 249 s 8 are each amended to read  
7 as follows:

8 (1) Any person or entity may petition for the appointment of a  
9 qualified person, trust company, national bank, or nonprofit  
10 corporation authorized in RCW 11.88.020 as the guardian or limited  
11 guardian of an incapacitated person. No liability for filing a  
12 petition for guardianship or limited guardianship shall attach to a  
13 petitioner acting in good faith and upon reasonable basis. A petition  
14 for guardianship or limited guardianship shall state:

15 (a) The name, age, residence, and post office address of the  
16 alleged incapacitated person;

17 (b) The nature of the alleged incapacity in accordance with RCW  
18 11.88.010;

19 (c) The approximate value and description of property, including  
20 any compensation, pension, insurance, or allowance, to which the  
21 alleged incapacitated person may be entitled;

22 (d) Whether there is, in any state, a guardian or limited guardian,  
23 or pending guardianship action for the person or estate of the alleged  
24 incapacitated person;

25 (e) The residence and post office address of the person whom  
26 petitioner asks to be appointed guardian or limited guardian;

27 (f) The names and addresses, and nature of the relationship, so far  
28 as known or can be reasonably ascertained, of the persons most closely  
29 related by blood or marriage to the alleged incapacitated person;

30 (g) The name and address of the person or facility having the care  
31 and custody of the alleged incapacitated person;

32 (h) The reason why the appointment of a guardian or limited  
33 guardian is sought and the interest of the petitioner in the  
34 appointment, and whether the appointment is sought as guardian or  
35 limited guardian of the person, the estate, or both;

36 (i) A description of any alternate arrangements previously made by  
37 the alleged incapacitated person, such as trusts, advanced directives  
38 for mental health care, or powers of attorney, including identifying

1 any guardianship nominations contained in a power of attorney, and why  
2 a guardianship is nevertheless necessary;

3 (j) The nature and degree of the alleged incapacity and the  
4 specific areas of protection and assistance requested and the  
5 limitation of rights requested to be included in the court's order of  
6 appointment;

7 (k) The requested term of the limited guardianship to be included  
8 in the court's order of appointment;

9 (l) Whether the petitioner is proposing a specific individual to  
10 act as guardian ad litem and, if so, the individual's knowledge of or  
11 relationship to any of the parties, and why the individual is proposed.

12 (2)(a) The attorney general may petition for the appointment of a  
13 guardian or limited guardian in any case in which there is cause to  
14 believe that a guardianship is necessary and no private party is able  
15 and willing to petition.

16 (b) Prepayment of a filing fee shall not be required in any  
17 guardianship or limited guardianship brought by the attorney general.  
18 Payment of the filing fee shall be ordered from the estate of the  
19 incapacitated person at the hearing on the merits of the petition,  
20 unless in the judgment of the court, such payment would impose a  
21 hardship upon the incapacitated person, in which case the filing shall  
22 be waived.

23 (3) No filing fee shall be charged by the court for filing either  
24 a petition for guardianship or a petition for limited guardianship if  
25 the petition alleges that the alleged incapacitated person has total  
26 assets of a value of less than three thousand dollars.

27 (4)(a) Notice that a guardianship proceeding has been commenced  
28 shall be personally served upon the alleged incapacitated person and  
29 the guardian ad litem along with a copy of the petition for appointment  
30 of a guardian. Such notice shall be served not more than five court  
31 days after the petition has been filed.

32 (b) Notice under this subsection shall include a clear and easily  
33 readable statement of the legal rights of the alleged incapacitated  
34 person that could be restricted or transferred to a guardian by a  
35 guardianship order as well as the right to counsel of choice and to a  
36 jury trial on the issue of incapacity. Such notice shall be in  
37 substantially the following form and shall be in capital letters,  
38 double-spaced, and in a type size not smaller than ten-point type:



1        NEW SECTION.    **Sec. 18.**    Sections 1 through 13 of this act  
2    constitute a new chapter in Title 71 RCW.

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